

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING
of ARM 17.8.748 and 17.8.767)	ON PROPOSED AMENDMENT
pertaining to Emitting Units)	
and Montana Top-Down Best)	
Available Control Technology)	(AIR QUALITY)
(BACT) Analysis Process and)	
Procedures)	

TO: All Concerned Persons

1. On March 24, 2004, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., March 15, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The Board believes it is reasonably necessary to establish a top-down Best Available Control Technology (BACT) analysis process in rule for the purpose of facilitating consistent and procedurally documented BACT determinations taking into account energy, environmental, and economic impacts and other costs. The Board also believes it is reasonably necessary to specify the methods for analyzing, and documenting analysis of, alternative processes/practices.

The analysis procedures are detailed in the draft Montana Top-Down Best Available Control Technology Analysis Process and Procedures Manual, 2004 Edition (MT BACT Manual), which would be adopted as a final manual and incorporated by reference into the rules. The MT BACT Manual has been adapted for use in Montana from the U.S. Environmental Protection Agency (EPA) New Source Review Workshop Manual - Draft October 1990 (NSR Manual). The five key steps in the top-down BACT process are: Step 1: identification of available control technologies or techniques; Step 2: elimination of technologically infeasible options; Step 3: ranking of the remaining control technologies; Step 4: evaluation, and documentation of the evaluation, of control technologies; and Step 5: selection of the control technology that constitutes BACT. The MT BACT Manual would ensure proper documentation of the process

used to determine BACT for applicable Montana Air Quality Permit actions.

The EPA NSR Manual applies only to major sources subject to Prevention of Significant Deterioration of Air Quality (PSD) requirements, which apply to major sources of pollutants regulated under the federal Clean Air Act, except hazardous air pollutants, that would be located in an area that meets one or more ambient air quality standards, known as an "attainment area." The following alternatives, in conjunction with the Montana air quality rules, exclude major sources subject to nonattainment area new source review, which requires lowest achievable emission rate (LAER) control, rather than BACT. An area may be an attainment, or PSD, area for some pollutants but a nonattainment area for other pollutants, so that the same permit application may be subject to both sets of requirements, for different pollutants. The top-down BACT analysis would not apply to those portions of an application subject to LAER.

In order to determine the appropriate scope of the rule establishing the top-down BACT process, the Board is considering the following mutually exclusive alternatives for the rulemaking.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

ALTERNATIVE 1:

17.8.748 NEW OR MODIFIED EMITTING UNITS-PERMIT APPLICATION REQUIREMENTS (1) through (3)(d) remain the same.

(4) An application for a Montana air quality permit, except that portion of an application subject to nonattainment area new source review, must include the following:

(a) a BACT analysis conducted pursuant to the Montana Top-Down Best Available Control Technology (BACT) Analysis Process and Procedures Manual, 2004 edition.

(a) through (l) remain the same but are renumbered (b) through (m).

(5) through (7) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

Explanation of Alternative 1: This alternative would require applicants for all Montana Air Quality Permits to submit a top-down BACT analysis for each permitting action resulting in a net emissions increase at the source, except for that portion of an application subject to nonattainment area new source review for which the applicable control requirement is lowest achievable emission rate (LAER), rather than BACT.

ALTERNATIVE 2:

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17.8.748 NEW OR MODIFIED EMITTING UNITS-PERMIT APPLICATION REQUIREMENTS (1) through (3)(d) remain the same.

(4) An application for a Montana air quality permit, except that portion of an application subject to nonattainment area new source review, must include the following:

(a) for applicants subject to the requirements under ARM Title 17, chapter 8, subchapter 12, a BACT analysis conducted pursuant to the Montana Top-Down Best Available Control Technology (BACT) Analysis Process and Procedures Manual, 2004 edition.

(a) through (l) remain the same but are renumbered (b) through (m).

(5) through (7) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

Explanation of Alternative 2: This alternative would require applicants for Montana Air Quality Permits to submit a top-down BACT analysis for each permitting action resulting in a net emissions increase at a Title V major source, except for that portion of an application subject to nonattainment area new source review for which the applicable control requirement is lowest achievable emission rate (LAER), rather than BACT. The sources subject to the top-down BACT process would include major sources of hazardous air pollutants and sources that have the potential to emit 100 tons per year or more of any other pollutant.

ALTERNATIVE 3:

17.8.748 NEW OR MODIFIED EMITTING UNITS-PERMIT APPLICATION REQUIREMENTS (1) through (3)(d) remain the same.

(4) An application for a Montana air quality permit must include the following:

(a) For applicants subject to the requirements under ARM Title 17, chapter 8, subchapter 8, a BACT analysis conducted pursuant to the Montana Top-Down Best Available Control Technology (BACT) Analysis Process and Procedures Manual, 2004 edition.

(a) through (l) remain the same but are renumbered (b) through (m).

(5) through (7) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, MCA

Explanation of Alternative 3: This alternative would require applicants for all Montana Air Quality Permits to submit a top-down BACT analysis for each permitting action resulting in a net emissions increase at a major source subject to PSD requirements.

In addition to the proposed rule amendments, the Board believes that it is reasonably necessary for the MT BACT Manual to address the issue of analysis of inherently lower polluting processes/practices to redefine the source. The Board is considering the following mutually exclusive options to address this issue for this rulemaking.

Option 1 (Section III.A.3 of MT BACT Manual)

Include the following language in the MT BACT manual at Section III.A.3:

The Department will not consider the BACT requirement a means to redefine the design of the source when considering available control alternatives.

Reason for Option 1: EPA historically has not considered the BACT process appropriate for redefining a source.

Option 2 (Section III.A.3 of MT BACT Manual)

Include the following language in the MT BACT manual at Section III.A.3:

There may be instances where, in the Department's judgment, the consideration of alternative production processes is warranted and appropriate for consideration in the BACT analysis. However, redefining the project using an alternative production process is limited to analyzing an applicant's proposed set of raw materials or fuels resulting in a given end product.

Reason for Option 2: Under certain circumstances, alternative processes/practices (limited to a given raw material and a given end product) may be appropriate and feasible methods of reducing emissions from a given project.

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) through (g) remain the same.

(h) 42 USC 7412, et seq., listing hazardous air pollutants;

(i) The Montana Top-Down Best Available Control Technology (BACT) Analysis Process and Procedures Manual, 2004 edition.

(2) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-215, MCA

REASON: The Board believes that it is reasonably necessary to incorporate by reference the MT BACT Manual due to the relatively large content of the document.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. March 31, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By:

JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, _____, 2004.